

**Probate Committee
Judicial Conference of Indiana**

March 14, 2008

Minutes

1. Members present. The following members of the Committee were present: David Bolk, Larry Bradley, Susan Orr Henderson, Phillip Houk, David Kolger, Thomas Milligan, and Kevin Barton, Chair.
2. Staff present. Michelle C. Goodman provided the Committee with staff assistance.
3. Guest. Kristen Kemp, Inheritance Tax Division, Indiana Department of Revenue.
4. Approval of minutes. The Committee approved the minutes from the November 2007 meeting.
5. Maximum Fee Guidelines. The Committee continued its discussion on the fee guidelines. The Committee again acknowledged that the case law disapproves of attorney fees based on a straight percentage and that this area should be treated the same as other areas that require fee petitions with supporting documentation. The Committee also noted that the guidelines have become more of the rule versus the maximum. Ms. Kemp discussed that the DOR uses the guidelines in reviewing all inheritance tax returns to check the deductions for attorney fees and have used the guidelines to support challenges to fees. She stated that without guidelines, there would be no criteria to evaluate this and raise challenges for excessive fees. The Committee asked whether the DOR could request documentation to support the information on a return. Ms. Kemp responded that they did have subpoena powers. The Committee also asked what the trend is in the state regarding fees on returns. Ms. Kemp stated that the guidelines are used across the board and even in counties without guidelines, the fees seem reasonable. The Committee reaffirmed its determination that the published guidelines were no longer necessary and to disavow the 1994 guidelines. The Committee affirmed the decision to present this issue to the Board of Directors at their meeting this afternoon.

The Committee reviewed the draft benchbook material on local probate rules and fee guidelines. The Committee requested staff to draft a caveat for the first section regarding fee guidelines and the relevant cases. The Committee approved the content of section 7.02 and will continue to review section 7.03, which is the sample fee petition. The Committee requested that staff email the draft revisions for section 7.01 for review.

6. Department of Revenue. Ms. Kemp distributed revised tax forms for the Committee's information. She indicated that they hope to be effective in June of 2008. Ms. Kemp also briefly discussed that there is a movement to have the tax determination moved away from the courts and with the DOR.
7. Innovations in Probate. Judge Barton provided the Committee with a revised draft document outlining the concerns with the baby boomer population in the probate area. Judge Barton also indicated he had a recent discussion with the new chair of the Elder Law section of the State Bar Association. Mag. Houk informed the Committee that there will be an adult CASA program starting in Allen County soon. The Committee decided it

would be best to submit the draft to the Chief Justice for his review and comment before proceeding further in drafting specific solutions.

8. Legislation. The Committee briefly discussed the provisions of SB 78 and SB 81.
9. State Bar Section. Judge Barton provided the Committee with the minutes from the October section meeting for review and consideration.
10. Other business. The Committee was surveyed about the certified mail costs incurred by the clerk for sending notices of administration and whether the clerk passes that expense to the estate. The Committee said that none of their clerks pass that back to the estate.
11. Future meetings. The remaining 2008 meeting schedule is: June 20, and October 24, 2008. All meetings will be held at the Indiana Judicial Center at 1:30 p.m.

Respectfully submitted,

Michelle C. Goodman
Staff Attorney